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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,182	02/11/2008	Ingo Schulze	2003P00857WOUS	1368

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BSH HOME APPLIANCES CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
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EXAMINER

PERRIN, JOSEPH L

ART UNIT	PAPER NUMBER
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1711

NOTIFICATION DATE	DELIVERY MODE
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01/28/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/560,182	Applicant(s) SCHULZE, INGO	
	Examiner Joseph L. Perrin	Art Unit 1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-34 is/are pending in the application.
- 4a) Of the above claim(s) 15-24 and 29-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20051209</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group II, claims 25-28, in the reply filed on 20 December 2010 is acknowledged. The traversal is on the ground(s) that allegedly no serious exists for Examiner to search all claims. This is not found persuasive because Applicant has failed to adequately refute the *prima facie* case of obviousness with appropriate showings or evidence. In accordance with MPEP §803: "For purposes of the initial requirement, a serious burden on the examiner may be *prima facie* shown by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP § 808.02. That *prima facie* showing may be rebutted by appropriate showings or evidence by the applicant." In the instant case, the Examiner has provided a *prima facie* showing of separate classification and different field of search as shown in the Restriction Requirement. Applicant's allegations of coextensive search and no "serious burden" include no appropriate showings or evidence and, therefore, are not persuasive. Accordingly, the restriction is considered proper in accordance with MPEP §803.

2. The requirement is still deemed proper and is therefore made FINAL.

3. Claims 15-24 and 29-34 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 20 December 2010.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 25-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. The term "significantly" in claim 25 is a relative term which renders the claim indefinite. The term "significantly" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. What speed is "significantly above an applicational rotational speed" and "significantly below the applicational rotational speed"? The metes and bounds of patent protection sought are not adequately defined by such relative terminology since it is unclear as to what threshold defines a "significant" increase or decrease in rotational speed.

7. Similarly, claim 25 recites that the drum is rotated at speeds at which the laundry items are "strongly compressed" and "rub vigorously against one another". At what threshold do the items become "strongly compressed"? What speeds are the items *not* strongly compressed? Similarly, what speeds result in vigorous rubbing as opposed to non-vigorous rubbing? Such relative terminologies fail to define the metes and bounds of patent protection sought.

8. Finally, the Examiner notes that the relative terms are recited in the intended use of the claimed apparatus during operation and are not positively recited structural

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limitations. Notwithstanding this, the recitation of indefinite subject matter as claimed requires correction and clarification. Applicant is urged to define the apparatus claims in terms of structure and structural configuration rather than relying in indefinite relative terminology and intended use as in instant claim 25 should Applicant wish to obtain an apparatus patent. It is well settled that claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function (*In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959)) and that “apparatus claims cover what a device *is*, not what a device *does*” (*Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original)).

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 25-28 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 781881 to Ortega (cited by Applicant; cited as “X” reference in corresponding foreign search report), or in the alternative, under 35 U.S.C. 103(a) as obvious over Ortega.

Regarding claim 25, Ortega discloses a washing machine comprising a rotary laundry drum 3 and a drive motor capable of intermittently driving the laundry drum during a washing and rinsing process in alternating directions of rotation. See washing machine structure of Figure 3, drum operations of Figures 1-2 and column 4, line 5 –

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column 5, line 16 describing the operation of the washing machine and driving the drum motor in the manner claimed. Particularly see the intermittently and alternating drive motor operation of Ortega:

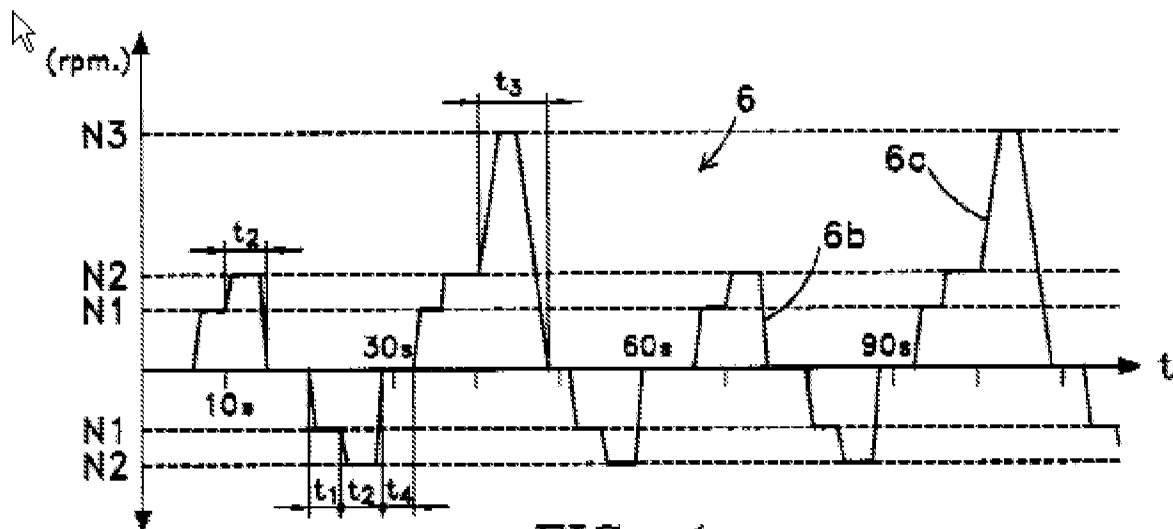


FIG. 1 of Ortega

Regarding the speed control device of claim 25, Ortega recites a wash program which runs the intermittently driven and alternating directions of rotations at respectively different speeds as shown Figures 1-2 of Ortega, which read on a structure or "device" which controls the drive motor in the manner claimed (simply stated, the means for controlling speed clearly taught by Ortega reads on the claimed "speed control device").

Regarding the majority of claim 25 with respect to the drive motor, Applicant recites significant intended use language of the operation of the drive motor during a washing and rinsing process without positively reciting structure further defining the drive motor. Thus, the intended use during operation of the washing machine is not afforded patentable weight and the apparatus disclosed by Ortega reads on the apparatus as claimed since, as shown above, the drive motor of Ortega is fully capable

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of performing the claimed drive motor operation including intermittently and alternately driving the laundry drum.

However, even if *arguendo* that one were to give the drive motor operation in the instant apparatus claim weight with respect to the apparatus as claimed, depending on how the disclosure of Ortega is interpreted Ortega still anticipates the washing machine as claimed. For instance, the drive motor of claim 25 recites:

a drive motor intermittently driving the laundry drum during the washing and rinsing process in alternating directions of rotation, the laundry drum being rotated in a first phase, in which the laundry drum is accelerated in one direction of rotation to a first rotational speed significantly above an applicational rotational speed and in the other direction of rotation to a second rotational speed significantly below the applicational rotational speed (this reads on Fig. 1 of Ortega where N3 is a speed "significantly" above an applicational rotational speed and N1 is a speed in the other direction and below an applicational rotational speed),

the laundry drum being rotated in a second phase within at least one of the washing and rinsing process, in which the laundry drum is accelerated in a second phase of high washing mechanics in both directions of rotation to speeds at which the individual items of laundry are strongly compressed and rub vigorously against one another (see first two rotations of N1/N2 of Ortega showing complimentary reversed rotations, as well as repeated rotations of N1/N2 starting at reference numeral 6b)

and that the first and second phases take place successively at least once during at least one of the washing and rinsing process (as can be seen in Fig. 2 of Ortega, the described "phases" are successive with the "second phase" occurring before (first two rotations at N1/N2) and after (second pair of rotations of N1/N2 shown as "6b") a "first phase" which includes rotational speed N3 and subsequent reverse rotation including N1),

the nominal value of the first speed being selected so that the items of laundry can fall from the drum jacket during a subsequent reduction in the drum speed and that as a result of compression of the items of laundry in the inner area of the drum a sufficiently large free area is created to allow the detached exterior items of laundry to roll into the free area when the laundry drum is accelerated in the opposite direction of rotation to the second rotational speed (this reads on Fig. 1 of Ortega which shows the drum speed transitioning from the first speed N3 in which laundry centrifugally sticks to the tub below N2 and N1 where laundry tumbles in the drum; also note that the transition from one rotational direction to the other requires a zero speed which manifestly would cause the laundry to tumble via gravity).

Thus, the drum rotating operation of Ortega falls within the scope and is readable on the drum rotating operation in claim 25. Notwithstanding the significantly broader scope of the claims with respect to Applicant's Figure 1, note that Applicant's Figure 1 and Figure 1 of Ortega are similar in operation and rotational speeds. Accordingly, Ortega fully anticipates the apparatus of claim 25 regardless of whether or not the

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intended use operation of the drive motor is given patentable weight to the claimed apparatus.

Regarding claim 26, Ortega further discloses concerns for foam formation and imbalance and discloses that the control unit performs an imbalance test and cutting acceleration if an imbalance is detected (see col. 5, lines 40-45). The Examiner notes that detection of foam and imbalance/eccentricity in a washing machine is notoriously well known and is generally not considered a patentable modification.

Regarding claim 27, Ortega further discloses running normal wash programs “depending on the other factors affecting soaking” and varying the wash program operations (see col. 4, lines 40-53).

Regarding claim 28, Applicant claims a “device for establishing and evaluating at least one of the type and quantity of laundry items...”. This generic “device” recitation with the intended use of “establishing and evaluating at least one of the type and quantity of laundry items...” reads on a cycle selector wherein the user selects or establishes a cycle based on laundry type or quantity and the washing cycle is performed by the controller. Such structure is a standard feature in generally all domestic washing machines. Further, Ortega provides express teachings of normal wash programs and delicate wash programs, with the establishing of a desired wash program resulting in the operation of the program. Manifestly, in order for the washing machine of Ortega to perform either a normal or delicate type washing such device for selecting the wash cycle necessarily must exist in order for user to select a washing cycle based on type of laundry item. Thus, the position is taken that Ortega inherently

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or implicitly discloses a device which is fully capable of performing the intended use operation as claimed.

The Examiner notes that Applicant's apparatus claims are replete with generic "device" language followed by the intended use operation of the device. However, it is fundamental that an apparatus claim defines the structure of the invention and not how the structure is used in a process, or what materials the structure houses in carrying out the process. *Ex parte Masham*, 2 USPQ2d 1647, 1648 (BPAI 1987). See also *In re Yanush*, 477 F.2d 958, 959, 177 USPQ 705,706 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 1032, 168 USPQ 530, 534 (CCPA 1971); *In re Casey*, 370 F.2d 576, 580, 152 USPQ 235,238 (CCPA 1967). As long as the apparatus of Ortega is capable of performing the intended use operation claimed, the prior art apparatus meet the requirements of the claimed feature. Applicant has not established on this record any structural distinction between apparatus within the scope of the rejected claims and the apparatus fairly described by Ortega, and no such structural distinction is apparent. Notwithstanding the washing machine of Ortega being fully capable of performing the claimed intended use, the washing machine of Ortega also discloses each and every step of the intended use operation as claimed. Accordingly, Ortega fully anticipates the apparatus as claimed. Applicant is urged to recite the instant invention in terms of structure as the apparatus has been elected rather than the method of using should Applicant wish to obtain a patent on the elected apparatus.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph L. Perrin whose telephone number is (571)272-1305. The examiner can normally be reached on M-F 8:00-4:30.

12. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael E. Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph L. Perrin/
Joseph L. Perrin, Ph.D.
Primary Examiner
Art Unit 1711

JLP